

Article - Public Utilities

[\[Previous\]](#)[\[Next\]](#)

§20–204.

(a) (1) By resolution and adopting regulations, the Commission shall establish a minority business enterprise utilization program to facilitate the participation of responsible certified minority business enterprises in contracts awarded by the Commission for goods and services that are not covered under § 20–203 of this subtitle, if the Commission determines that:

(i) minority business enterprises are underrepresented in the award of these contracts due to the effects of past discrimination; and

(ii) a program is necessary to remedy the effects of this past discrimination.

(2) The Office shall administer the program established under this subsection.

(b) Regulations that establish the program under subsection (a) of this section shall include provisions that:

(1) recognize the certification of minority business enterprises by the State certification agency designated under § 14–303(b) of the State Finance and Procurement Article;

(2) recognize any other certification program that the Commission determines substantially duplicates the requirements of the State certification agency;

(3) provide for the graduation of a minority business enterprise from the program if the Commission determines that the minority business enterprise no longer requires the assistance or benefits offered by the program;

(4) at the time of submission, require a bid or proposal based on a solicitation with an expected degree of minority business enterprise participation to include proof of a certified minority business enterprise commitment by stating:

(i) the potential subcontract opportunities available in the prime procurement contract; and

(ii) the number of minority business enterprises that have certified, under the penalties for perjury, that the minority business enterprise has entered into an agreement with the bidder or offeror to provide goods or services under specific terms outlined in the certification;

(5) require each general contractor to submit to the Commission monthly reports of the number of minority business enterprises employed by the general contractor;

(6) require each general contractor to provide prompt notification to the Commission if a contract with a minority business enterprise is terminated;

(7) require each general contractor to:

(i) maintain a participation level from minority business enterprises that is consistent with the participation level referenced under item (4)(ii) of this subsection; or

(ii) provide justification for the inability of the general contractor to maintain the participation level;

(8) provide for minority business enterprise participation through subcontracting;

(9) (i) authorize the waiver of all or part of the program for a specific contract if the Commission determines that applying the program to the contract would conflict with the overall objectives and responsibilities of the Commission; and

(ii) require the Commission to report annually to the Montgomery County and Prince George's County Senate and House Delegations to the Maryland General Assembly on any waivers granted under this subsection;

(10) except as provided in item (11) of this subsection, provide for a system of granting a preference of up to the lesser of 5% or \$50,000 to minority business enterprises in evaluating bids or proposals;

(11) subject to subsection (d) of this section, establish a sheltered market program in which bidding on procurement contracts designated by the Commission as appropriate is restricted to certified minority business enterprises;

(12) require the solicitation document accompanying each solicitation to set forth the regulations that establish the program;

(13) require the geographic location and the principal place of business of the minority business enterprise to be a consideration for participation in the program, including requiring Montgomery County businesses and Prince George's County businesses to each have a targeted percentage of at least 40% of any contracts; and

(14) authorize the Commission to:

(i) refuse to recognize the certification of a business found to be in violation of the purposes of the program; and

(ii) permanently bar an active principal of a violating business from future participation in the program.

(c) Before accepting an alternative certification program under subsection (b)(2) of this section, the Commission shall examine the alternative program to ensure that:

(1) the alternative program complies with the guidelines established under § 20–205 of this subtitle; and

(2) the principal owner of an eligible minority business enterprise is in not more than one certified business that is participating in the Commission minority business enterprise utilization program under this section.

(d) (1) The sheltered market program established in subsection (b)(11) of this section may not be used until all less restrictive remedies under subsection (b) of this section and race–neutral remedies, including assistance with bonding requirements, financing, or bidding procedures for small firms, have been used and determined to be ineffective.

(2) If at least three certified minority business enterprises bid on a contract under the sheltered market program, the Commission shall award the contract to the lowest bidder.

(3) If fewer than three certified minority business enterprises bid on a contract under the sheltered market program, the contract shall be awarded under subsection (b)(10) of this section.

[\[Previous\]](#)[\[Next\]](#)